

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re:  
MEDTRONIC, INC.,  
SPRINT FIDELIS LEADS  
PRODUCTS LIABILITY LITIGATION

Multidistrict Litigation  
No. 08-1905 (RHK/JSM)

ORDER NO. 7  
First Amended Omnibus  
Management Order

THIS DOCUMENT RELATES  
TO ALL CASES

**Pursuant to the Stipulation of the Parties, Docket No. 131, IT IS ORDERED that Subparagraph 13B of Order No. 4 (Pleadings and Other Documents), dated June 4, 2008 [Docket No. 115] is vacated. The provisions that the parties have agreed to substitute for the requirements of said subparagraph are shown in bold below.**

The Judicial Panel on Multidistrict Litigation has transferred actions in the above-captioned matter to this Court for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 as part of a nationwide litigation involving Medtronic's Sprint Fidelis defibrillator leads. Pursuant to this Court's jurisdiction over these actions, this Court hereby enters the following order:

1. Consolidation of Related Actions. Any other actions filed, whether filed directly in the United States District Court for the District of Minnesota or in any other United States District Court (whether by original filing or removal), that are related to this litigation are hereby consolidated into one action (the "Consolidated Action") for all pretrial purposes, pursuant to Fed. R. Civ. P. 42 and MDL Order dated February 21, 2008 under 28 U.S.C. § 1407(a). This order does not constitute a determination that these actions should be consolidated for trial, nor does it have the effect of making any

person or entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.

2. Caption of Case. All Orders, pleadings, motions and other documents served or filed in this Consolidated Action shall have the following caption:

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re:  
MEDTRONIC, INC.,  
SPRINT FIDELIS LEADS  
PRODUCTS LIABILITY LITIGATION

Multidistrict Litigation  
No. 08-1905 (RHK/JSM)

THIS DOCUMENT RELATES TO  
[“ALL ACTIONS” or specify by title and case number the individual  
applicable cases if the document relates to less  
than all of the consolidated cases.]

The original of this Order shall be filed by the Clerk and a copy thereof shall be filed in each subsequently filed or transferred action, which is related to and consolidated with this action. The Clerk of Court shall maintain docket and case files under this caption, and pursuant to the procedures set forth in paragraph 3, below.

3. Docket and Filing Procedures.

A. Master Docket and File. The Clerk shall maintain a master docket and a master case file under the style set forth in paragraph 2, above. All Orders, pleadings, motions and other documents shall, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable. The master docket is set up with the following parties: Plaintiffs’ Lead Counsel, Plaintiffs’ Liaison Counsel, and Defendants’ Liaison Counsel. These parties shall appear in the docket report. The plaintiffs and defendants from the other cases shall be

added as MDL - Notice Only party types, but shall not appear on the docket report. See Attachment A (the procedural instructions and the MDL attorney registration form to obtain CM/ECF login and password).

- B. Separate Dockets and Files. The Clerk shall maintain a separate docket for each case removed or transferred to this Court. Each such case shall be assigned a new case number in this Court.
- C. Captions and Separate Filing. Orders, pleadings, and other documents shall bear the caption set forth in paragraph 2 above. If generally applicable to all consolidated actions, they shall include in their caption the notation that they relate to “ALL ACTIONS” and shall be filed and docketed only in the master file. Orders, pleadings, and other documents intended to apply only to particular cases shall indicate in their caption the case number of the case(s) to which they apply and shall be filed and docketed in the master case file and specified individual case file(s).
- D. Address, Number of Copies, and Electronic Filing. When filing pleadings and other documents relating to “ALL ACTIONS” with the Court, the parties shall comply with the Court’s requirements as to electronic filing and the documents shall be filed on the ECF system under the master file or, if electronic filing is not possible, a signed original shall be sent or delivered to the Clerk of Court, U.S. District Court, District of Minnesota, 316 North Robert Street, St. Paul, Minnesota 55101 for filing in the master file. When filing documents relating to a particular case or cases, the documents shall be filed on the ECF system under both the master file and the particular case, or, if electronic filing is not possible, one signed

original shall be sent for the master file and an additional copy for each particular case file to which the matter related. For all dispositive motions, send two courtesy copies of the submissions to the Chambers of Judge Richard H. Kyle, U.S. District Court, Room 764, 316 North Robert Street, St. Paul, Minnesota 55101. In addition, proposed orders should be sent in WordPerfect or Word format to the Chambers mailbox at kyle\_chambers@mnd.uscourts.gov. For all nondispositive motions, send two courtesy copies of the submissions to the Chambers of Magistrate Judge Janie S. Mayeron, U.S. District Court, Room 610, 316 North Robert Street, St. Paul, Minnesota 55101. In addition, proposed orders should be sent in WordPerfect or Word format to the Chambers mailbox at mayeron\_chambers@mnd.uscourts.gov.<sup>1</sup>

- E. Discovery Requests and Responses. Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses shall not be filed with the Court except when specifically ordered by the Court or to the extent offered in connection with a motion.
- F. Rules of Civil Procedure. All actions listed in Schedule A, attached to the JPML's Transfer Order dated February 21, 2008, as well as any other actions subsequently transferred to or filed in this proceeding, shall be governed by the Federal Rules of Civil Procedure and the Local Rules for

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<sup>1</sup> Prior to September 9, 2008, any pleading or document hand-delivered to the Court, (e.g., by messenger, Federal Express, UPS), including courtesy copies of pleadings or documents for the Judges, shall be delivered to the Clerk's office located in the temporary District Court at Suite 700, 180 East Fifth Street, St. Paul, Minnesota 55101.

the District of Minnesota, including Local Rules 72.1 (“Magistrate Judge Duties”) and 72.2 (“Review of Magistrate Judge Rulings”).

4. Consolidation of Additional Actions. Any action subsequently filed or transferred to this Court that arises out of the acts or transactions alleged in the Consolidated Action shall be reassigned to this Court, and shall be consolidated herewith if and when they are called to the Court's attention.

5. Applicability of Order. This Order applies automatically to all actions listed in Schedule A, attached to the JPML's Transfer Order dated February 21, 2008, as well as any other actions subsequently transferred to or filed in this proceeding, without the necessity of future motions or orders. Should parties in any subsequently transferred or filed actions object to the terms of this Order, they must do so within 30 days of receipt of this Order from Plaintiffs' Liaison Counsel.

6. Service List. This Order is being mailed to liaison counsel previously appointed by this Court for the parties and referenced in paragraphs 10.D and 11 below. Pursuant to paragraphs 10.D and 11, liaison counsel for each side shall forward a copy of this Order to all other attorneys for their respective side. Currently, this Court is operating with the service list attached to Order No. 1 as Attachment B. [Docket No.12]. An updated and corrected service list shall be prepared as the litigation progresses. Liaison counsel for the parties shall be responsible for conferring with the Clerk of Court to ensure that a master service list is established and kept current and which shall include all parties and counsel that join this action. Counsel are also directed to send email addresses to the Court for notification purposes and service.

7. List of Affiliated Companies and Counsel. To assist the Court in identifying any issues or matters of recusal or disqualification, and to the extent that

counsel did not comply with this directive in connection with Order No. 1 dated April 23, 2008 [Docket No. 12], counsel shall submit to the Court, no later than 15 days from the date of this Order, a list of all companies affiliated with the parties and all counsel associated in the litigation.

8. List of Related Cases. Plaintiffs' Lead Counsel and Defendants' Liaison Counsel shall confer among themselves and jointly file with the Court, no later than 30 days from the date of this Order, a list of all related cases pending in state and federal court and their current status, to the extent known.

9. Admission of Counsel. Attorneys admitted to practice and in good standing in any United States District Court are admitted as MDL attorneys in this litigation. Association of local co-counsel is not required. All counsel are expected to familiarize themselves with the Local Rules of this Court<sup>2</sup>, the American Bar Association's *Civil Discovery Standards*, as well as *The Manual for Complex Litigation 4<sup>th</sup>* (Federal Judicial Center 2004), which the Court and parties may be called upon to refer to as a resource in the case management of this litigation.

10. Organization and Responsibilities of Plaintiffs' Counsel. As stated in the Court's Order No. 3 dated May 30, 2008 [Docket No. 113], to act on behalf of plaintiffs, the Court has designated the following counsel:

A. Plaintiffs' Lead Counsel

Daniel E. Gustafson, Esq.  
Gustafson Gluek PLLC  
725 Northstar East  
608 Second Avenue South  
Minneapolis, MN 55402  
(612) 333-8844

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<sup>2</sup> [http://www.mnd.uscourts.gov/local\\_rules/local\\_rules.pdf](http://www.mnd.uscourts.gov/local_rules/local_rules.pdf)

B. Responsibilities of the Plaintiffs' Lead Counsel. Plaintiffs' Lead Counsel shall be a member of and direct the work of the Plaintiffs' Steering Committee. In this regard, Plaintiffs' Lead Counsel shall be responsible for coordinating the activities of plaintiffs during pretrial proceedings and in consultation and with the assistance of Plaintiff's Steering Committee, shall:

- i. Determine (after consultation with other members of Plaintiffs' Steering Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the plaintiffs on all matters arising during pretrial proceedings;
- ii. Coordinate the initiation and conduct of discovery on behalf of plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure relating to discovery or any other subsequent order of this Court;
- iii. Conduct settlement negotiations on behalf of plaintiffs, but not enter binding agreements except to the extent expressly authorized;
- iv. Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently, and economically;
- v. Enter into stipulations, with opposing counsel, necessary for the conduct of the litigation;
- vi. Prepare and distribute to the parties periodic status reports;

- vii. Maintain adequate time and disbursement records covering services of designated counsel and establish guidelines, for approval by the Court, as to the keeping of time records and expenses;
- viii. Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
- ix. Perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further Order of the Court; and
- x. Submit, if appropriate, additional committees and counsel for designation by the Court.

Any counsel for any plaintiff who disagrees with Plaintiffs' Lead Counsel (or those acting on behalf of Plaintiffs' Lead Counsel) or who have individual or divergent positions may present written and oral arguments, and otherwise act separately on behalf of their client(s) as appropriate, provided that in doing so they do not repeat arguments, questions, or actions of the Plaintiffs' Lead Counsel.

C. Plaintiffs' Steering Committee.

Chair of Plaintiffs' Steering Committee  
Charles S. Zimmerman, Esq.  
Zimmerman Reed PLLP  
651 Nicollet Mall, Suite 501  
Minneapolis, MN 55402  
(612) 341-0400

Richard J. Arsenault, Esq.  
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(800) 256-1050



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(916) 448-9800

Jim Doyle, Esq.  
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Suite 600  
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(713) 230-2200

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Whatley Drake & Kallas LLC  
1000 Park Place Tower  
2001 Park Place North  
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2727 Camino Del Rio South  
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780 Third Avenue  
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33 South Sixth Street  
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801 Estelle Drive  
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P. O. Box 16606  
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Mark P. Robinson, Jr., Esq.  
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620 Newport Center Drive  
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Camilo K. Salas, III, Esq.  
Salas & Co., L.C.  
650 Poydras Street  
Suite 1660  
New Orleans, LA 70130  
(504) 799-3080

Hunter J. Shkolnik, Esq.  
Rheingold, Valet, Rheingold, Shkolnik & McCartney LLP  
113 East 37th Street  
New York, NY 10016  
(212) 684-1880

Marcus L. Stevenson, Esq.  
Sanford Stevenson Riff LLP  
2016 Bissonnet Street  
Houston, TX 77005  
(800) 240-2460

Fred Thompson, III, Esq.  
Motley Rice LLC  
28 Bridgeside Boulevard  
P. O. Box 1792  
Mt. Pleasant, SC 29464  
(843) 216-9000

Teresa Toriseva, Esq.  
Wexler Toriseva Wallace LLP  
1446 National Road  
Wheeling, WV 26003  
(304) 238-0066

Leila H. Watson, Esq.  
Corey, Watson, Crowder & DeGaris, P.C.  
2131 Magnolia Avenue  
Birmingham, AL 35205  
(205) 328-2200

The members of Plaintiffs' Steering Committee shall consult with Plaintiffs' Lead Counsel in coordinating the plaintiffs' pretrial activities and in planning for trial.

D. Plaintiffs' Liaison Counsel

Robert K. Shelquist, Esq.  
Lockridge Grindal Nauen PLLP  
100 Washington Avenue South  
Suite 2200  
Minneapolis, MN 55401  
(612) 339-6900

Plaintiffs' Liaison Counsel shall:

- i. Maintain and distribute to all other plaintiffs' counsel and to defendants' counsel an up-to-date service list;
- ii. On behalf of all counsel for all plaintiffs, receive from defendants, the Court, and third parties, and as appropriate, distribute to all other plaintiffs' counsel the following: written and electronic communications from the Court, defendants and third parties;

pleadings; Orders from the Court; and discovery and documents from defendants and third parties.

- iii. At the appropriate time<sup>3</sup>, maintain and make available to all other plaintiffs' counsel at reasonable hours a complete file of all documents served by or upon each party, and establish and maintain an electronically accessible document depository.

11. Defendants' Liaison Counsel. As stated in the Court's Order No. 3 dated May 30, 2008 [Docket No. 113], the Court has designed the following counsel to act as Defendants' Liaison Counsel:

George W. Soule, Esq.  
Jennifer K. Huelskoetter, Esq.  
Melissa R. Stull, Esq.  
Bowman & Brooke LLP  
150 South Fifth Street  
Suite 3000  
Minneapolis, MN 55402  
(612) 339-8682

Defendants' Liaison Counsel shall

- A. Maintain and distribute to Plaintiffs' Liaison Counsel and to defendants' co-counsel an up-to-date service list;
- B. On behalf of all counsel for all defendants, receive from plaintiffs, the Court and third parties, and as appropriate, distribute to all other defendants' counsel the following: written and electronic communications from the Court, plaintiffs and third parties; pleadings; Orders from the Court; and discovery and documents from plaintiffs and third parties.

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<sup>3</sup> Pursuant to paragraph 25 of this Order, pending further order of this Court, discovery has been stayed.

12. Privileges Preserved. No communication among plaintiffs' counsel or among defendants' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

13. Service of Documents.

A. Orders. A copy of each Order shall be provided to Plaintiffs' Liaison Counsel, and to Defendants' Liaison Counsel for distribution as appropriate to other counsel and parties. To clarify the meaning of this paragraph, service through CM/ECF only goes to those who have filed a case and are in ECF. In cases that will be, but have not yet been transferred to this District, the new plaintiffs are not in the system. ECF can only notice those that are in the system at the time the document was filed. It therefore remains the responsibility of the liaison counsel for both plaintiffs and defendants to effect service of all Orders on all parties. While the Court can assist counsel with counsel's service list, at least in the beginning of this litigation, that list may contain parties and attorneys that are not yet in our system.

B. Pleadings and Other Documents. **Plaintiffs' Lead Counsel and Liaison Counsel and Defendants' Liaison Counsel and National Counsel, as specified below, shall be provided with one copy of each pleading or other document served and/or filed by a party, including any and all attachments.**

**Service of all documents herein required to be served by the Federal Rules of Civil Procedure, the Local Rules for the District of Minnesota, and any orders of this Court, shall be accomplished by**

transmittal of such documents via electronic mail on counsel for each party as described below.

The parties need not provide a non-electronic copy of each document when service is accomplished by electronic mail. Upon request by a party, the serving party shall provide a non-electronic copy of a document otherwise served by electronic mail.

Plaintiffs' counsel may serve Complaints on defendants by transmitting such Complaints via electronic mail to defendants' counsel at the e-mail addresses specified below.

**For Plaintiffs' Counsel:**

**Daniel E. Gustafson  
dgustafson@gustafsongluek.com  
Gustafson Gluek PLLC  
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Fax: (612) 339-6622**

**Robert K. Shelquist  
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Lockridge Grindal Nauen PLLP  
100 Washington Avenue South  
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Minneapolis, MN 55401  
Tel: (612) 339-6900  
Fax: (612) 339-0981**

**For Defendants' Counsel:**

**George W. Soule  
george.soule@msp.bowmanandbrooke.com  
Melissa R. Stull  
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Daniel L. Ring  
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William Asher  
washer@mayerbrown.com  
Mayer Brown LLP  
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**Pursuant to Fed. R. Civ. P. 5, service on Plaintiffs' Lead Counsel and Liaison Counsel and Defendants' Liaison Counsel and National Counsel constitutes service on other attorneys and parties for whom such counsel is acting, and such service shall be deemed effective seven days after service on such counsel.**

14. Official Court Website. The Court has created and shall maintain a website devoted solely to the Medtronic Sprint Fidelis Leads Products Liability Litigation, found at <http://www.mnd.uscourts.gov>. Through the website, parties may access, as may be established, such items as Court Orders, Court Minutes, Court Calendar, Contacts, the Master Service List, Frequently Asked Questions, and Court Transcripts. Plaintiffs' Lead Counsel and counsel for defendants shall confer with the Court regarding the content of the website.

15. Transcript Payment. The official transcript of all hearings shall be posted on the Medtronic Sprint Fidelis Leads Litigation website. The cost of an expedited official transcript shall be borne by the plaintiffs and defendants equally. Payment is to be made within 14 days of receipt of the court reporter's invoice.

16. Pleadings. Deadlines for answers or responses to the Complaints filed in all individual actions are hereby suspended until further Order of this Court.

17. Master Pleadings, Motions, and Orders.

- A. Master Complaint. It shall be the responsibility of Plaintiffs' Steering Committee to file (1) a single master consolidated complaint containing allegations that would be suitable for adoption by reference in individual cases, and (2) a single master consolidated complaint containing allegations that would be suitable for adoption by reference in third-party payor cases. The master complaints shall not constitute the inception of a new "case or controversy" in this District and shall not supersede or render moot each pending separate action that had been transferred to this District for pretrial proceedings by the MDL Panel. Rather, said master complaints shall be used as a device to facilitate administration of the dockets and to assist in identifying issues common to all of the cases centralized before this Court. The allegations of the master complaints are not deemed automatically included in any particular case. However, in order to avoid possible problems with statutes of limitations or doctrines of repose, the following shall apply: For cases now pending in this Court (or as of the date a case is filed in, removed to, or transferred to this Court), it is deemed that a motion to amend is filed in each such case to add any potentially applicable claims and theories from the master complaints not contained in the complaint actually filed in that case, except to the extent a plaintiff hereinafter files an amended complaint disavowing such claims and theories or limits its claims and theories to those contained in an amended complaint.



- B. Master Answers. Defendants' counsel shall file master answers that shall incorporate defendants' defenses in law or fact to claims made against them in the various actions that are presently pending in this litigation. The answers shall not attempt to provide a cross-reference to particular paragraphs or counts of the various complaints. The master answers shall, however, cross-reference to particular paragraphs or counts in plaintiffs' master complaints. The master answers shall in a "generic" manner admit or deny (including denials based on lack of information and belief) the allegations typically included in claims made against it as well as make such additional allegations as are appropriate to its defenses. When so filed in MDL 08-1905, the master answers constitute an answer in each constituent case now pending or when hereafter filed in, removed to, or transferred to this Court, except to the extent the defendants later file a separate answer in an individual case.
- C. Refinement of Pleadings. It is anticipated that an amended, more specific complaint and answer may be required before a case is scheduled for trial or remanded to a transferor court, but amendments of pleadings prior to that time should generally be avoided.
- D. Motions; Orders. A motion, brief, or response that has a potential effect on multiple parties (e.g., the anticipated motion of defendants to dismiss based on preemption) shall be deemed made in all similar cases on behalf of, and against, all parties similarly situated except to the extent such other parties timely disavow such a position. Additional motions, briefs, or responses addressed to such issues should not be filed or submitted by

other parties except to the extent needed because of inadequacy of the original papers, to present unique facts, or because of a difference in positions. Orders resolving such motions shall likewise be deemed as made with respect to all parties similarly situated unless the order indicates otherwise.

- E. Meet and Confer Prior to Nondispositive Motions. To avoid unnecessary litigation concerning nondispositive motions, including motions relating to discovery disputes, counsel are directed to meet and confer before filing a motion. In any motion filed, counsel for the moving party must certify that a good-faith effort was made to resolve the dispute.

18. Preservation of Evidence. Currently, preservation of evidence and documents is governed by Order Nos. 1 and 2. [Docket Nos. 12, 53]. It is the Court's intention to enter a more complete order concerning preservation of evidence and documents. Therefore, the parties are directed to confer for the purpose of reaching an agreement on the language to be included in such order and to file with the Court the agreed-upon preservation order on or before 4:30 p.m. on June 18, 2008. To the extent that the parties are unable to agree on the language of the preservation order, they shall file with the Court a redline version of a proposed order containing the language agreed to, clearly identifying the language which is the subject of disagreement between the parties, and setting forth clearly the parties' respective proposals concerning the same. Said redlined order setting forth the parties' competing proposals shall be filed with the Court no later than 4:30 p.m. on June 18, 2008. By this date, the parties may also supply Magistrate Judge Mayeron and opposing counsel with an informal letter brief, not to exceed two pages in length, setting forth why their respective language should be

adopted and the opposing parties' proposed language should be rejected. Unless Magistrate Judge Mayeron determines that a hearing on the contents of the preservation order is necessary, this matter shall be decided based on the written submissions of the parties.

19. Protective Order. It is the Court's intention to enter a protective order. Therefore, the parties are directed to confer for the purpose of reaching an agreement on the language to be included in such order and to file with the Court the agreed-upon protective order on or before 4:30 p.m. on June 18, 2008. To the extent that the parties are unable to agree on the language of the protective order, they shall file with the Court a redline version of a proposed order containing the language agreed to, clearly identifying the language which is the subject of disagreement between the parties, and setting forth clearly the parties' respective proposals concerning the same. Said redlined order setting forth the parties' competing proposals shall be filed with the Court no later than 4:30 p.m. on June 18, 2008. By this date, the parties may also supply Magistrate Judge Mayeron and opposing counsel with an informal letter brief, not to exceed two pages in length, setting forth why their respective language should be adopted and the opposing parties' proposed language should be rejected. Unless Magistrate Judge Mayeron determines that a hearing on the contents of the protective order is necessary, this matter shall be decided based on the written submissions of the parties.

20. Introduction for Website. It is the Court's intention to include an Introduction of this litigation on the Court Website. Therefore, for the purpose of developing the language to be included in the Introduction, the parties are directed to confer and prepare a brief written summary indicating their joint understanding of the

facts involved in the litigation and the important factual legal issues. This agreed-upon summary shall be filed with the Court on or before 4:30 p.m. on June 18, 2008. In the event the parties cannot agree on this summary, they shall file with the Court a redline version of a summary containing the language agreed to, clearly identifying the language which is the subject of disagreement between the parties, and setting forth clearly the parties' respective proposals concerning the same. Said redlined Introduction setting forth the parties' competing proposals shall be filed with the Court no later than 4:30 p.m. on June 18, 2008. By this date, the parties may also supply Magistrate Judge Mayeron and opposing counsel with an informal letter brief, not to exceed two pages in length, setting forth why their respective language should be adopted and the opposing parties' proposed language should be rejected.

21. Status Conferences. The Court shall convene status conferences in its discretion. The next two status conferences are scheduled for July 14, 2008 at 10:00 a.m., and August 27, 2008 at 10:00 a.m. These two status conferences shall take place in Courtroom 1 on the 7th Floor of the temporary United States Courthouse, 180 East Fifth Street, St. Paul, Minnesota. Thereafter, beginning in September, 2008, unless otherwise ordered by this Court, status conferences shall be held on the fourth Wednesday of each month at 10:00 a.m. The location for these status conferences shall be in the Courtroom of Judge Richard H. Kyle at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

Further, unless otherwise ordered herein, it shall be the intent of the Court to meet in chambers with Plaintiffs' Lead Counsel, the Chair of Plaintiffs' Steering Committee and counsel for defendants one hour before each status conference (i.e. at 9:00 a.m.).

Counsel for each side shall meet and confer in advance of each status conference and submit to the Court within four business days before each status conference the following: (1) a report setting forth a summary of the activities of the parties since the last status conference; (2) a joint agenda listing matters to be considered by the Court at the status conference; and (3) a brief—one to two paragraph—summary of the party positions as to any disputed issues listed on the agenda.

22. Issues Known to the Court to be Addressed at the July 14, 2008, Status Conference. At the next status conference on July 14, 2008, the parties should be prepared to discuss with the Court the following items:

- A. Necessity of a plaintiffs' state liaison counsel
- B. Other duties of plaintiffs' lead counsel, plaintiffs' steering committee, plaintiffs' liaison counsel, and defendants' liaison counsel
- C. Additions or changes to website, including draft Introduction
- D. Protective Order
- E. Preservation Order
- F. Tolling Agreement
- G. Common Benefit Attorneys Fund
- H. Individual Fact Sheets

23. Scheduling of Motions. Status conferences shall be regularly scheduled by the Court to permit substantial advance notice to all parties. Therefore, except as otherwise provided herein, and to accommodate the schedules of the Court and the parties, all argument or hearing on any motion shall be scheduled to coincide with calendared status conferences. Any hearing or oral argument deemed necessary by

the Court on motions that require a ruling on an expedited basis shall be scheduled with notice of at least five business days. If circumstances warrant, the Court may shorten a notice period.

24. Informal Motion Practice. Magistrate Judge Mayeron is willing to resolve nondispositive disputes between the parties on an informal basis via a telephone conference. However, before she will agree to proceed with this informal resolution mechanism, all parties to the dispute must agree in advance of the telephone conference to use this resolution process because the very nature of the process requires that parties give up rights they would otherwise have (e.g. dispute is heard over the telephone; there is no recording of the telephone conversation; no briefs are filed). Therefore, if all parties to a dispute agree to use the informal resolution process to resolve the matter, then the parties may schedule a telephone conference with Magistrate Judge Mayeron. In addition, in advance of the telephone conference, the parties may submit to Magistrate Judge Mayeron and the other parties to the dispute an informal letter brief, not to exceed three pages in length, setting forth their respective positions with respect to the dispute. If there is no agreement to resolve the dispute through this informal resolution process, then the dispute must be presented to the Court via formal motion and hearing.

25. Discovery. Until further order of this Court, all discovery is stayed.

26. Schedule.

A. Plaintiffs' Master Complaints shall be filed and served on or before July 3, 2008.

- B. Defendants' Master Answer or other responsive pleading, including a dispositive motion to dismiss based on preemption, shall be filed and served on or before August 4, 2008.
- C. Plaintiffs' responsive brief to any dispositive motions filed by defendants shall be filed and served on or before September 18, 2008.
- D. Defendants' reply brief to any such motions shall be filed and served on or before October 20, 2008.
- E. A hearing on any such motions filed shall be held before Judge Richard H. Kyle at 9:00 a.m. on November 4, 2008 in Judge Kyle's Courtroom at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

Dated: July 7, 2008

*s/ Janie S. Mayeron*  
JANIE S. MAYERON  
United States Magistrate Judge

## MEMORANDUM re CM/ECF FILING

### TO ALL COUNSEL in MEDTRONIC-FIDELIS MDL MATTERS

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#### CM/ECF stands for Case Management, Electronic Case Files

Before attempting electronic filing in these matters, please take time to read the U.S. District Court, District of Minnesota's Electronic Case Filing Civil ECF User's Manual and Civil ECF Procedures Guide posted on the U.S. District Court of Minnesota's website (<http://www.mnd.uscourts.gov/>). Once the website is accessed (<http://www.mnd.uscourts.gov/>), click on "**Electronic Case Filing**" on the left-hand side of the home page. Please review the User's Manual and Procedures Guide before filing a document. Please feel free to call the ECF helpdesk if you have questions (612-664-5155). Please make certain that the attorney filing the document(s) has seen and approved of the document(s) before undertaking filing as you are using the attorney's bar number, login and password to file.

**If you have case management questions, please call Judge Kyle's Calendar Clerk, Deb Siebrecht, at 651-848-1166.**

#### ➡ **Obtaining an ECF Login Name and Password**

The Court's main website contains information on how to register for an ECF login and password. After accessing the website, click on "Registration form for e-filing-MDL attorneys" located in the Forms link on the left-hand side. To access the court's live ECF website, select Live ECF Link on the left-hand side of the Court's home page. Adding a second (or third) e-mail address may be done at the time of registration by listing the additional e-mail address(es) on the "additional e-mail" line on the original registration form. Under "Electronic Case Filing," there are directions as to how to add a secondary e-mail address if you are already registered.

- ➡ A separate PACER (Public Access to Court Electronic Records) login and password is necessary. It is likely that you, or your firm, already has a PACER account. If not, a PACER account can be established by contacting:

PACER SERVICE CENTER  
P.O. Box 780549  
San Antonio, TX 78278  
(800) 676-6856  
<http://pacer.psc.uscourts.gov/>

- ➡ **IMPORTANT NOTE:** The court's ECF system gets bogged down with the many documents being uploaded, especially on Friday afternoons. It is suggested that you begin early (if you have many attachments you may want to begin by **11:30 a.m., Central Time**. If it is a simple filing without attachments, you can begin as late as 2:00 p.m., CT). If there are problems encountered, beginning early will help ensure that your filing will be timely. If you have technical problems, please contact the Court's Help Desk.\*



- The Master Docket is set up with the following parties: Plaintiffs' Lead Counsel, Plaintiffs' Liaison Counsel, Defendants' Lead Counsel and Defendants' Liaison Counsel. These parties will appear on the docket report. Defendants and plaintiffs from the other cases will be added as MDL-Notice Only party types. All parties can be queried by selecting the Party when using CM/ECF Query. When filing documents in the Master Docket, select the appropriate party. If the filer is a member of the Plaintiffs' Liaison Counsel, select Plaintiffs' Liaison Counsel, for example. If the filer is a plaintiff in one of the individual cases, select the appropriate party, but note that the party type in the Master Docket case will be MDL-Notice Only. In addition, all parties must file a Notice of Appearance in the Master Docket after their initial filing in an individual case. When filing documents relating to a particular case or cases, the documents shall be filed on the ECF system under both the Master Docket and the particular case(s).
  
- All documents filed in the USDC's CM/ECF must be in "PDF" format (.pdf). The most widely used program that can convert from Word and/or Word Perfect to .pdf, is Acrobat. If you do not know how to change a document from Word to .pdf and move it to your export file, ask your Help Desk for assistance or our website for assistance.
  
- Each filing/upload of documents **cannot** be larger than **2MB**. If a document or attachments exceed 2MB, divide it/them into appropriate amounts and use page numbers for each section and file as separate attachments. (E.g.: File Attachment A, part 1 of 3, pp. 1 – 50; then file as separate attachment, Attachment A, part 2 of 3, pp. 51- 100; and also file as separate attachment, Attachment A, part 3 of 3, pp. 101 – 149.) When you create your Word/WP document in preparation to file it and/or when you convert it to a .pdf, your computer can show the size of the document/PDF.
  
- After e-filing your document(s), if appropriate, e-mail the judge the proposed order(s) only. **Proposed orders must be converted to WordPerfect ("WP") or Word format prior to sending them to the judge.** DO NOT send other papers to the judge's e-mail address. Reference the case or cases in the subject line and body of the e-mail if it is only a few cases. If the proposed order refers to all cases, state so. If the filing relates to many, but not all cases, put a list of cases to which the proposed order applies in the text of the e-mail and the moving party(ies)'s name(s) for reference. The email address is [kyle\\_chambers@mnd.uscourts.gov](mailto:kyle_chambers@mnd.uscourts.gov) or [mayeron\\_chambers@mnd.uscourts.gov](mailto:mayeron_chambers@mnd.uscourts.gov).
  
- After you complete your filing and obtain your proof of filing page, please make certain you **logout** of the ECF system.
  
- Note: Do not be alarmed if you see "CASE CLOSED" on an e-mail docket distribution from the court. It is only an internal matter for the court and does not affect the current docket in that case.

\*If you encounter problems, please call **Court's Help Desk line 1-866-325-4975**. If you reach a voice mailbox, leave a clear message including your name and telephone number. If you cannot complete your filing electronically, please see section L. Technical Failure in the Civil ECF Procedures Guide.

If you inadvertently file a document in the *wrong case*, please refer to Section L. Correcting Docket Entries on page 20 of the Court's Civil ECF Procedures manual. However, if your *document* is wrong but filed in the correct case, you will have to file an amended version of your document.

New complaints, summonses & civil cover sheets cannot be filed and served using CM/ECF at this time, but they can be e-mailed to the clerk for processing and posting to CM/ECF. The email address for new cases is [newcases@mnd.uscourts.gov](mailto:newcases@mnd.uscourts.gov).

If a filer does not know whether another party is a registered ECF user, they can go onto CM/ECF, select "Utilities," then "Mailing Information for a Case" and enter the case number and the information will appear.

Filing deadline shall be 11:59 p.m. Central Time. If your document goes through after Midnight p.m., it will be considered filed on the following day.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
ELECTRONIC FILING REGISTRATION FORM FOR MDL ATTORNEYS**

This form is used by attorneys in MDL matters to register for an account on the District of Minnesota Electronic Filing System (ECF). Registered attorneys will have privileges to electronically submit documents and to receive electronic service of filings. By registering, attorneys consent to receiving electronic notice of filings through ECF. Only attorneys may register for an ECF account. The following information is required for registration:

**I. PLEASE TYPE**

Mr./Mrs./MS. (circle one)

First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_

Last Name: \_\_\_\_\_ If appropriate, circle one: Senior /Junior /II /III

Federal/State Court admission (what state): \_\_\_\_\_ Bar ID Number: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Firm Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Voice Telephone Number \_\_\_\_\_ Fax Number: \_\_\_\_\_

Internet Mail Address: \_\_\_\_\_

MDL action - indicate case number: \_\_\_\_\_

By submitting this registration form, the undersigned agrees to abide by all Court rules, orders and policies and procedures governing the use of the electronic filing system. The undersigned also consents to receiving notice of filings pursuant to Fed. R. Civ. P. 5(b) and 77(d) through the Court's electronic filing system. The combination of user ID and password will serve as the signature of the attorney filing the documents. Attorneys must protect the security of their passwords and immediately notify the court if they learn that their password has been compromised.

\_\_\_\_\_  
**Signature of Attorney Registrant**

\_\_\_\_\_  
**Date**

E-mail the completed form to: [ecfhelpdesk@mnd.uscourts.gov](mailto:ecfhelpdesk@mnd.uscourts.gov) with Subject line: Attention: ECF Registration - MDL